Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

86 - 1308

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

H. J. LUBBEHUSEN, DONALD L. MILES and **M. JACQUELINE MILES; MARTIN LEICH; CAROL LANT; BETTY L. DAVIS; OSCAR L. MILLER** and **ELIZABETH H. MILLER; DARRELL HIGGS; WALTER TIEDMAN** and **RUTH TIEDMAN; JOHN MUTH** and **ELIZABETH MUTH; PAUL WILLIAMS; JOHN MOORE** and **JUDY MOORE;** individually and as representatives of a class of taxpayers of Vanderburgh County, Indiana

Petitioners,

vs.

STATE OF INDIANA, et al; **BOARD OF TAX COMMISSIONERS ALICE McBRIDE, AS AUDITOR** of **VANDERBURGH COUNTY; LEWIS VOLPE**, as **TREASURER OF VANDERBURGH COUNTY; VANDERBURGH COUNTY COMMON COUNCIL**

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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QUESTION PRESENTED

1. CAN THE INDIANA STATE BOARD OF TAX COMMISSIONERS RESCIND RELIEF GRANTED TO MANY INDIVIDUAL TAXPAYERS BY THE COUNTY BOARD OF REVIEW WITHOUT INDIVIDUAL AND ADEQUATE NOTICE, AN OPPORTUNITY TO BE HEARD AND A HEARING ON THE MERITS, AS REQUIRED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

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NO.

IN THE
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H.J. LUBBEHUSEN,
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ELIZABETH MUTH; PAUL WILLIAMS;
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individually and as representatives of
a class of taxpayers of Vanderburgh
County, Indiana

Petitioners

vs.

STATE OF INDIANA, et al;
BOARD OF TAX COMMISSIONERS
ALICE McBRIDE, AS AUDITOR
of **VANDERBURGH COUNTY; LEWIS VOLPE,**
as **TREASURER OF VANDERBURGH**
COUNTY; VANDERBURGH COUNTY
COMMON COUNCIL,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE UNITED STATES

The Petitioners, respectfully request that a writ of

certiorari issue to review the orders (and opinion) of the Court of Appeals of Indiana First District entered in this case on August 4, 1986.

OPINION BELOW

The opinion of the Court of Appeals of Indiana was a memorandum decision and is attached as Appendix A. A petition for rehearing was filed August 18, 1986 and a petition to transfer was denied by the Indiana Supreme Court without opinion on December 1, 1986, a copy of the order is attached as Appendix B. The opinion of the Court of Appeals of the State of Indiana refers to a judgment rendered by the Gibson Circuit Court, Gibson County, Indiana, dated May 17, 1985, a copy of this judgment is attached as Appendix C.

JURISDICTION

The judgement of the Supreme Court of Indiana was entered on December 1, 1986. This petition for certiorari is filed within Ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitution Amendment V and Amendment XIV.

STATEMENT OF THE CASE

This is a class action on behalf of taxpayers in Vanderburgh County, Indiana, to recover additional taxes they were required to pay for the years 1979, 1980, and 1981 in 1983, because of an Equalization Order of the Indiana State Board of Tax Commissioners made on January 20, 1982 rescinding corrections made by the Vanderburgh County Board of Review in property assessments. The rescission order was made without individual and adequate notice, an opportunity to be heard and a hearing on the merits, in violation of the due process clause

of the XIV Amendment to the Constitution of the United States.

CONSTITUTIONAL QUESTION FIRST RAISED

These Constitutional questions were initially raised by the Petitioners in their original complaint filed on May 23, 1983, initiating these proceedings and has been consistently contended by them before each court wherein this case has been pending.

The trial court's conclusion of law number 5 holds:

> This Court concludes the statutory procedure found in I.C. 6-1.1-1-14-1 et seq. as to notice comports with Due Process requirements of the U.S. Constitution and the Constitution of the State of Indiana.

The opinion of the Court of Appeals in the State of Indiana specifically ruled on this Constitutional issue as follows:

> In short, taxpayers may not prevail on their theory that they were deprived of property without due process of law, because the State Board complied with the procedure for notice and hearing prescribed by law and constitutionally sound.

FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED

In 1979, as was true throughout the State of Indiana, Vanderburgh County Real Estate was reassessed for tax purposes by the Township assessors. Many of the residents in Knight Township appealed their individual assessments to the County Board of Review for various reasons and the County Board of Review corrected a great number of them by reducing them. This procedure is found in the Indiana Code,

I.C. 6-1.1-15-1 *et seq.* The action of the County Board of Review was not appealed to the State Board of Tax Commissioners. None of the required statutory due process provisions of Chapter 15 were followed authorizing the State Board of Tax Commissioners to change the County Board of Review's correction of these individual reassessments. Real estate taxes for the years 1979, 1980 and 1981 were collected on the basis of the action of the County Board of Review.

On August 12, 1981, the following notice was mailed to the Vanderburgh County Auditor and later published in the Evansville Newspapers:

> Notice to the taxpayers of Vanderburgh County, Indiana.
>
> Notice is hereby given to the taxpayers of Vanderburgh County, Indiana that the State Board of Tax Commissioners will conduct a public hearing in the City Council Chambers, Civic Center, Evansville, Indiana, on August 26, 1981, at 10:00 A.M., CDT. The State Board of Tax Commissioners is considering the possible modification of all real property assessments within the county as of March 1, 1979, pursuant to IC 6-1.1-14-4.
>
> At such hearing, all interested parties will be given the opportunity to be heard on said matters. Said parties may appear with or without counsel. The State Board of Tax Commissioners will also accept written statements and exhibits at or before this hearing.

No individual notice was given to the petitioners/taxpayers who had obtained relief from the County Board of Review.

A public hearing was held on August 26, 1981 and again

on December 1, 1981. These hearings considered the sole issue of whether or not the assessments as between the various townships of Vanderburgh County were uniform and did not at any time consider the actions taken by the County Board of Review.

The State Board of Tax Commissioners entered the following order which was thereafter published in the Evansville Newspapers:

> THEREFORE, the State Board had determined that said Order shall be modified, so that the assessments within Vanderburgh County as of March 1, 1979 will be equalized with other classes of property within and between counties as follows:

Armstrong Township	No Change
Center Township	No Change
Scott Township	No Change
German Township	Residential Land - No Change Residential Improvements - shall be increased by ten percent (10%) of the assessed value as determined by the township assessor and fixed at one hundred ten percent (110%) of the assessed value of such improvements as determined by the township assessor before action by the County Board of Review. Commercial - No Change
Perry Township:	No Change
Union Township:	No Change
Knight Township:	Residential Land - No Change Residential Improvements - Will be decreased by ten percent (10%) from the assessed value as determined by the township assessor and fixed at

ninety percent (90%) of the assessed value of such improvements as determined by the township assessor before the action by the County Board of Review.
Commercial - No Change

Pigeon Township: No Change R.p. 754)

The State Board of Tax Commissioners and the Vanderburgh County Auditor have interpreted this order as voiding the action of the County Board of Review in reducing the assessments of the petitioners/taxpayers. This resulted in the petitioners/taxpayers receiving bills for additional taxes for 1979, 1980, and 1981. This additional tax of over $800,000.00 has been segregated and placed in Escrow until the outcome of this suit.

REASONS FOR ALLOWANCE OF THE WRIT

Indiana has a statute giving taxpayers a procedure to follow to obtain relief from erroneous tax assessments. I.C. 6-1.1-15-1 et seq. The petitioners followed this procedure and obtained relief from the County Board of Review. Even though the statute provides for an appeal, no one has taken an appeal from the granting of this relief.

Indiana also has a statute which allows the State Board of Tax Commissions to "equalize" tax assessments among the townships. I C 6-1 1-14-1 et seq. The State Board of Tax Commissioners followed this statute and issued an order "equalizing" tax assessments in Vanderburgh County, Indiana, and in the process rescinded the relief granted the petitioners by the county board of review. Nowhere in the proceedings followed by the State Board of Tax Commissioners, or in the published notices, was there any indication that the relief granted the petitioners, by the County Board of Review was being considered, or could be rescinded.

The State Board of Tax Commissioners published a notice of a hearing and did not give personal notice to the peti-

tioners. Their names and address where known because they had individually petitioned and obtained relief from the County Board of Review. The notice did not meet the requirements of the due process clause of the fourteenth amendment to the Constitution of the United States. *Mennenite Board of Missions vs. Adams,* 462, U.S. 791, 103 Sup. Ct. 2706, 77 Law Ed. 2d 180 (1983).

The published notice mentions equalization, but does not mention the petitioner's by name or even generically as taxpayers who obtained relief from the County Board of Review. The published notice does not mention that the actions of the County Board of Review in granting relief is going to be considered by the State Board of Tax Commissioners. The content of the notice does not meet the requirements of due process.

Mullane vs. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 Supp. Ct. 652, 657:

> "The fundamental requisite of due process of law is the opportunity to be heard" Grannis v. Ordean, 234 U.S. 385, 394, 34 S. Ct. 779, 783, 58 L.Ed. 1363. This right to be heard has little reality or worth unless one is informed that the matter is pending and can chose for himself whether to appear or default, acquiesce or contest."

The evidence presented at the State Board of Tax Commissioners hearing related to comparing samples of assessments of each township. There was no evidence relating in any way to the relief granted by the County Board of Review. The decision voiding the relief granted by the County Board of Review is in violation of the due process laws of the Fourteenth Amendment to the Constitution of the United States, because it is not based upon any evidence relating to the action taken by the County Board of Review.

Interstate Commerce Commission vs. Louisville and N.R. Co., 227 U.S. 83, 33 S. Ct. 185, 186:

> But the statute gave the right to a full

> hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.

While the order did not specifically rescind the relief granted to the petitioners by the County Board of Review, the State Board of Tax Commissioners have interpreted the order as rescinding this relief and the petitioners have been required by the county auditor and county treasurer to pay over $800,000.00 in taxes based on this rescission.

The procedure and authority of the State Board of Tax Commissioners to "equalize" tax assessments is not in issue. It is the rescinding of relief obtained from the County Board of Review, without having given the petitioners adequate notice, both as to the method of the notice and to the content of the notice as to the matters to be considered, and without presenting any evidence to support the conclusion that the relief granted should be rescinded, in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Memphis Light, Gas & Water Division vs. Kraft, 436 U.S. 13, 98 S Ct. 1554, 1562 (1978):

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstance, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

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IN THE
COURT OF APPEALS OF INDIANA
FIRST DISTRICT

H. J. LUBBEHUSEN, DONALD L. MILES and M. JACQUELINE MILES; MARTIN LEICH; CAROL LANT; BETTY L. DAVIS; OSCAR L. MILLER and ELIZABETH H. MILLER; DARRELL HIGGS; WALTER TIEDMAN and RUTH TIEDMAN; JOHN MUTH and ELIZABETH MUTH; PAUL WILLIAMS; JOHN MOORE and JUDY MOORE; individually and as representatives of a class of taxpayers of Vanderburgh County, Indiana — No. 1-985 A 240

Appellants (Plaintiffs Below)

vs.

STATE OF INDIANA, et al; BOARD OF TAX COMMISSIONERS ALICE McBRIDE, AS AUDITOR of VANDERBURGH COUNTY; LEWIS VOLPE, as TREASURER OF VANDERBURGH COUNTY; VANDERBURGH COUNTY COMMON COUNCIL,

Appellees (Defendants Below)

APPEAL FROM THE GIBSON CIRCUIT COURT
The Honorable Walter H. Palmer, Judge
CAUSE NO. C83-454

MEMORANDUM DECISION

ROBERTSON, P.J.

Appellant-plaintiff H. J. Lubbenhusen, et al. (taxpayers), representing a class of taxpayers residing in Vanderburgh County, appeals the judgment of the Gibson Circuit Court in favor of appellee-defendant State Board of Tax Commissioners, et al. (State Board) upholding the State Board's equalization order affecting Vanderburgh County.

We affirm

After the real property of taxpayers was reassessed incident to the general assessment in 1979, taxpayers appealed to the County Board of Review, which lowered some assessments. No appeal was taken from the County Board of Review's action. At the request of the State Board, the Vanderburgh County auditor filed with the State Board an Abstract of the 1979 assessments some time after February 5, 1981. As a result of its review of this abstract, the State Board determined that the Vanderburgh County assessment appeared to be improper. After notice and a hearing, the State Board issued an equalization order on October 20, 1981. This order adjusted the assessments among various townships in Vanderburgh County The State Board mailed certified copies of its order to the county auditor to be published in the local newspapers, and to the sheriff, who posted the order at the county courthouse.

On November 2, 1981, at least ten taxpayers filed a petition for review of the equalization order before the State Board. Notice of the hearing on the petition was mailed to each of the first ten taxpayers listed on the petition and to

the auditor, who had the notice published in the appropriate newspapers. Subsequent to the hearing on the petition, an amended equalization order was certified to the auditor on January 29, 1982, and the State Board sent certified copies of the second order to the sheriff for posting among public notices. The amended order was also published in two county newspapers. The taxpayers who constitute this class received bills for additional taxes for the years 1979, 1980, and 1981 on May 10, 1983. Their complaint was filed May 23, 1983, and this appeal was taken from the judgment denying taxpayers relief. Additional facts pertinent to the issues are developed below.

The issues presented for review are:

1. Whether the trial court had subject matter jurisdiction to consider the complaint?

2. Whether the trial court erred in finding that the State Board's issuance of the equalization order conformed to the statutory procedure and comported with due process?

3. Did the letter of the State Board to the county auditor regarding application of the equalization order operate to deprive taxpayers of equal protection?

ISSUE I

An appeal from an order of the state board of tax commissioners may be dismissed for lack of subject matter jurisdiction where one of the procedural predicates to review set out in IND. CODE 6-1.1-15-5 is not timely filed. *Margrat, Inc. v. Indiana State Board of Tax Commissioners*, (1982) Ind.App., 448 N.E. 2d 684. (failure to file intent to appeal with state board of tax commissioners).

The State Board contends that the trial court erred in

reviewing the equalization order because the taxpayers' complaint was filed more than 30 days after the State Board gave publication notice of its final determination. We agree with the taxpayers that the date on which taxpayers received their tax bills resulting from the equalization order is the date they received notice, for purposes of review under I.C. 6-1.1-15-5.

I.C. 6-1-31-4 (now 6-1.1-15-5) applies to any final determination of the State Board which affects the assessment on a taxpayer's property, including an equalization order. State Board of Tax Commissioners v. Oliverius, (1973) 156 Ind.App. 46, 294 N.E. 2d 646. Subsection (c) of I.C. 6-1.1-15-5 provides:

> To initiate an appeal under this section a person must take the action required within thirty (30) days after the board gives him notice of its final determination . . .

We are unable to determine from a reading of this section whether publication notice to taxpayers is sufficient to trigger the 30 day time period within which a taxpayer must initiate an appeal.

I.C. 6-1.1-15-1 to -4, dealing with the assessment of a taxpayer's tangible property, provides for individual notice mailed to the taxpayer of a determination with respect to a taxpayer's individual assessment. However, as we conclude in Issue II, when the State Board undertakes to equalize assessments among townships as it did in this case, due process does not require it to mail notice of its order to each taxpayer affected.

Nevertheless, we deem it fundamentally unfair to require a taxpayer whose assessment is affected by an equalization order to assert his appellate rights under I.C. 6-1.1-15-5(c) within 30 days after publication in the newspaper of the order. Because taxpayers here filed their complaint within 30 days

after receiving their tax bills, which served as taxpayers' first individual notice of the order, the complaint was timely, and the court had subject matter jurisdiction.

ISSUE II

The State Board may issue an order to increase or decrease assessed values of any tangible property if the Board finds that the assessed values within a county are not uniform and equal as to township, portions of the same township, or class of property. I.C. 6-1.1-14-5. In the instant case, the State Board increased some assessments and decreased other assessments of townships within Vanderburgh County.

Taxpayers contend that the action taken by the State Board effectively rescinded the county board's reassessment, and consequently, the State Board may not dispense with personal notice to the taxpayers of the hearing and resulting order as provided under I.C. 6-1.1-15-1 *et seq.* relating to State Board review of individual assessments. Further, taxpayers assail the procedure delineated in I.C. 6-1.1-14-4 to -9, where they contend the published and posted notice of the hearing failed to apprise taxpayers that their property assessment from 1979 may be affected by equalization. Finally, taxpayers believe that the hearings held were deficient because the State Board failed to consider evidence relating to the decrease in taxpayers' assessments made by the county board of review.

These issues were raised and decided unfavorably to taxpayers in *Hubbard v. Goss*, (1901) 157 Ind. 485, 62 N.E. 36. Recognizing the enormous expense and effort of providing individual notice to every taxpayer affected by a county- or state-wide equalization, our supreme court held that due process was met because the sessions of the board of review were not secret, taxpayers were given general notice of the time and place of the meeting by the auditor, taxpayers were given an opportunity to be heard at the meeting. *Id.*

The notice executed by the State Board stated:

> Notice is hereby given to the taxpayers of Vanderburgh County, Indiana that the State Board of Tax Commissioners will conduct a public hearing in the City Council Chambers, Civic Center, Evansville, Indiana, on August 26, 1981 at 10:00 A.M., CDT. The State Board of Tax Commissioners is considering the possible modification of all real property assessments within the county as of March 1, 1979, pursuant to I.C. 6-1 1-14-4.
>
> At such hearing, all interested parties will be given the opportunity to be heard on said matters. Said parties may appear with or without counsel. The State Board of Tax Commissioners will also accept written statements and exhibits at or before this hearing.

An identical notice was published prior to the hearing on the petition for review. This notice was sufficient to apprise taxpayers that the State Board would consider modifying assessments of real property in the county as of March 1, 1979 *See* I.C. 6-1.1-14-9(a). The equalization order necessarily had the effect of raising or lowering the assessments on individual's property within those townships affected by the order. Nevertheless, the provisions governing the equalization procedure do not provide for personal notice to every taxpayer whose property may be affected by the order. *Hubbard, supra.*

Respecting the alleged deficiency in the hearing, the State Board did not bear the burden of proving that the county board's decision to lower assessments was incorrect, as taxpayers would have us hold. *State Board of Tax Commissioners v. Smith,* (1984) Ind App., 463 N.E.2d 493, 495. Rather, taxpayers had the burden of showing that the State Board's

equalization order was not founded on substantial evidence and was therefore arbitrary and capricious. *Id.* at 495. They have not sustained their burden.

Also, taxpayers' argument that the State Board's equalization order was not timely is without merit. The trial court found that the abstract required in I.C. 6-1.1-14-1 was filed on or about February 5, 1981, at the request of the State Board. Under I.C. 6-1.1-14-5(b), the State Board may not issue an equalization order after February 15 of the year following the year in which the county abstract referred to in section 1 is filed with the State Board. Therefore, the State Board had until February 15, 1982, to issue its equalization order. That order was issued January 29, 1982, so it was timely. Although I.C. 6-1.1-14-1 directs the county auditor to file an abstract annually, the evidence showed that the abstracts were typically not filed with regularity or within the deadline prescribed in the statute. However, the auditor's failure to file the annual abstract is not reversible error.

In short, taxpayers may not prevail on their theory that they were deprived of property without due process of law, because the State Board complied with the procedure for notice and hearing prescribed by law and constitutionally sound.

ISSUE III

As their final issue, taxpayers assert that the State Board may not determine, consistent with equal protection, that certain property owners are not subject to additional property taxes resulting from the equalization order. The determination at issue was contained in a letter written by a commissioner of the State Board to the Vanderburgh County auditor:

> In the event ownership has changed between the reassessment of March 1, 1979 and the publication date of our equali-

> zation order, February 15, 1982, it is the opinion of this Board that a lien may not attach to the property involved for property taxes incurred prior to the change of ownership.

This was an opinion regarding the effect of the equalization order on bona fide purchasers without notice, a class of individuals given protection for a limited time from the burden of a tax lien under I.C. 6-1.1-9-4. Even assuming that the letter constituted governmental action, taxpayers have not convinced us that the classification is not rationally related to a legitimate governmental purpose. *See generally Board of Commissioners of Johnson County vs. Johnson*, (1909) 173 Ind. 76, 89 N.E. 590.

Judgment affirmed.

RATLIFF, J. AND NEAL, J. CONCUR.

APPENDIX B

STATE OF INDIANA
Clerk of the Supreme Court
and Court of Appeals
Marjorie H. O'Laughlin, Clerk
217 State House
Indianapolis, Indiana 46204
Telephone: 232-1930

No. 1-683A176
H.J. LUBBEHUSEN, et al V. STATE OF INDIANA, et al;

You are hereby notified that the Supreme Court

has on this day Appellants petition to Transfer is hereby DENIED. Givan, C.J.

All Justices Concur, except Shepard, J., who is not participating.

Appellants request for Oral Argument is hereby DENIED. Givan, C.J.

All Justices Concur, except Shepard, J., who is not participating.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

Witness my name and the seal of said Court, this 1 day of Decc, 1986.

MARJORIE H. O'LAUGHLIN
Clerk Supreme Court and
Court of Appeals

APPENDIX C

STATE OF INDIANA)		
) SS:		IN THE GIBSON CIRCUIT
COUNTY OF GIBSON)		COURT
H.J. LUBBEHUSEN, et al	)	
	)	
vs.	)	CAUSE NO. C-83-454
	)	
STATE OF INDIANA, et al	)	

FINDINGS OF FACT

CONCLUSIONS OF LAW AND JUDGMENT

This cause was submitted for trial by the Court without the intervention of a jury on October 12, 1984, and re-opened pursuant to motion by the Defendants for further evidence which was submitted on January 23, 1985. The Court having considered all the evidence herein and having also considered briefs and arguments of counsel now finds, concludes and rules as follows:

FINDING OF FACT

1. The year 1979 was a year of general reassessment for real estate throughout Vanderburgh County as well as throughout the entire State of Indiana, and effective as the basis for the taxes of real property payable in 1980.

2. For reasons which were not specifically established, various individual properties were appealed from Knight and German Townships in Vanderburgh County to the County Board of Review in 1979.

3. That Plaintiffs' Exhibits number 1-7 are true and correct copies of the results of the 1979 Spring assessment of property on Henry J. Lubbehusen, and the results of his re-

quest for review of that assessment pursuant to I.C. 6-1.1-15-1 et seq.

4. That plaintiffs' Exhibit Number 8 is a true and correct copy of the bill of the Vanderburgh County Treasurer for back taxes as a result of the subsequent ruling of the State Board of Tax Commissioners on February 5, 1982.

5. That the only notice given to the plaintiff, Henry J. Lubbehusen, of the hearing of the State Board of Tax Commissioners, held on December 1, 1981, was Exhibit G of the Transcript filed herein by the State Board of Tax Commissioners.

6. The Vanderburgh County Auditor, Alice McBride, is required by statute, IC 6-1.1-14-1, to prepare and transmit to the State Board of Tax Commissioners an abstract of the assessment of tangible property in that county.

7. This was referred to at trial as the "July abstract" but in fact this abstract was due to be filed on or before September 1, 1979.

8. This abstract referred to in the preceding paragraphs for Vanderburgh County for 1979 assessments was filed late with the State Board of Tax Commissioners, at the reopened hearing it was established that this abstract was not complete until February 5, 1981.

9. Thus, even though the State Board of Tax Commissioners was unable to state specifically when it was filed, it could not have been filed before February 5, 1981.

10. It is this filing of the county abstract which initiates, or "triggers", the equalization process by the State Board of Tax Commissioners.

11. IC 6-1.1-14-5 provided that the State Board has until February 15 of the year following the year in which the

abstract referred to in section 1 of this chapter is filed with the State Board to issue an equalization order, that is, until February 15, 1982. The order was issued January 29, 1982.

12. Equalization is an effort to distribute the tax burden in an equal manner between each taxpayer and classification of property. Section 5 of the statute provides the Board may issue an order increasing or decreasing assessed values of tangible property in order to equalize assessed values in any county or in the State as a whole.

13. On the basis of its review the State Board determined that the Vanderburgh County assessment appeared to be improper, and notice was given of a hearing scheduled for August 26, 1981, where the State Board would be "considering the possible modification of all real property assessments within the county as of March 1, 1979."

14. A hearing was held at the place and time indicated by the notice, and a record of that hearing was filed as Exhibit B to the Transcript of the Proceedings Before The State Board.

15. The State Board met on September 22 and again on October 5, 1981 to consider the report of the hearing and the hearing officer's recommendation.

16. On October 20, 1981, the State Board's first equalization Order was entered (Transcript of Proceedings Before The State Board Exhibit E2).

17. Certified copies of this Order were sent to the Vanderburgh County Auditor, Alice McBride, and Sheriff James DeGroote, who on October 21, 1981 posted the Order per instructions in the main lobby, as required by Section 6 and 9(b) of the statue.

18. On November 2, 1981, the petition for review which had been previously filed with, and certified by the Vanderburgh County Auditor, was filed with the State Board.

19. Petitioners claimed the increase imposed by the first equalization Order was "totally unfair" and that they "strongly objected".

20. On November 17, 1981, notice of another hearing regarding the possible modification of all real property assessments by the State Board as of March 1, 1979 pursuant to IC 6-1.1-14-4, was published according to the requirements of IC 6-1.1-14-9(b).

21. The first ten petitioners were also sent by mail on November 15, 1981, a direct, individual notice of the hearing as was published, stating the time and place thereof, as required by Section 8 of the statute.

22. Pursuant to those notices another equalization hearing was held on December 1, 1981, a record of that hearing was filed as Exhibit H to the Transcript of Proceeding Before The State Board.

23. The State Board met again on January 20, 1982, considered the report of this additional hearing, and entered its second equalization Order.

24. This Order was certified on January 29, 1982, and sent to the Vanderburgh County Auditor and Sheriff by mail on February 5, 1982.

25. Although the Order was published on February 15, 1982, in both the Evansville Courier and Press and posted in the main lobby in the Civic Center Complex, on the third floor of the Civic Center, in the Federal Building and in the Auditor's Office, there was no direct individual notice (i.e. directly mailed notice) of this amended equalization Order sent to the individual taxpayers.

26. In net effect to taxpayers the equalization Order meant 5,903 additional tax bills for approximately $834.000 additional taxes; however, it also generated 14,431 refunds in

the amount of $1,898.245.

27. Thereafter, on May 23, 1983, this litigation was filed (originally in the Vanderburgh Superior Court).

CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction of this cause, the same being a challenge to the allegations of defects in the equalization process found in I.C. 6-1.1-14-1 et seq., and the results of that process upon the plaintiffs, their property and previous assessments hearings founded under I.C. 6-1.1-15-1 et seq.

2. The Court concludes that in respect to the equalization order involved in this action the State Board of Tax Commissioners has fully complied with all of the statutory procedures contained in I.C. 6-1.1-14-1 through I.C. 6-1.1-14-9.

3. The Court concludes that the filing of the Abstract required by I.C. 6-1.1-14-1 is not a statute of limitations that precludes action by the State Board of Tax Commissioners. Its function is that of a trigger mechanism, to allow the State Board of Tax Commissioners to proceed to perform their duty as placed on them by our legislature.

4. That Court concludes that while it is correct that the Board did not appeal the actions of the Vanderburgh County Board of Review as to individual landowners, this does not preclude them from proceeding to equalize taxes on a County-wide basis under I.C. 6-1.1-14-1 et seq., even if the effect falls upon individual taxpayers. The Court can only conclude that the State's interest is equalized assessments throughout the County, or the State, is a legitimate function of the Legislature.

5. This Court concludes the statutory procedure found in I.C. 6-1.1-14-1 et seq as to notice comports with Due Process requirements of the U.S. Constitution and the Constitution of

the State of Indiana.

6. The Court concludes that no violation of the plaintiffs' equal protection rights has been proven during the course of this proceeding.

7. The Court concludes that the State Board of Tax Commissioners Equalization Order which was entered on January 20, 1982, certified on January 29, 1982, and sent to the Vanderburgh County Auditor and Sheriff for posting and publication according to statute should, in all respects stand as valid.

8. Plaintiffs should receive no relief under any of the issues raised.

JUDGMENT

The Court, having entered its written findings of fact and conclusions of law based thereon does now and hereby enter its JUDGMENT FOR DEFENDANTS in all respects and hereby ORDERS that Plaintiffs take nothing under each of the several counts of the complaint and the claims for relief, costs of this action are herewith taxed against the plaintiffs.

Dated this 17 day of May, 1985.

Walter H. Palmer, Judge
Gibson Circuit Court

STATE OF INDIANA)
) SS: IN THE GIBSON CIRCUIT
COUNTY OF GIBSON) COURT

H.J. LUBBEHUSEN, et al)
)
vs.) CAUSE NO. C-83-454
)
STATE OF INDIANA, et al)

ENTRY

(August 9, 1985)

Comes now the plaintiffs, by counsel, Jack N. VanStone and Leslie C. Shively, and come now the defendants, by counsel, Ted J. Holaday, Deputy Attorney General, and Alan M. Kissinger, and, this being the date, time and place set by the Court for hearing on both plaintiffs' and defendants' Motions to Correct Errors, the Court now hears oral arguments on said motions.

Comes now the Court, being duly and fully advised in the premises, and, having heard arguments of counsel, grants the plaintiffs' Motion to Correct Errors as it pertains to Assignments of error numbers one (1) thru eleven (11). The Court's Findings of Fact are ordered amended to include the following:

1. That the plaintiff, Henry J. Lubbehusen, did not appeal the decision of the County Board of Review;

2. That no member of the County Board of Review appealed the action taken by the County Board of Review;

3. That findings of fact relating to the plaintiff, Henry J. Lubbehusen are in a like or similar manner applicable to the members of the class of plaintiffs owning real estate in Knight Township;

4. That the assessment of property done by the German Township Assessor, in the Spring of 1979, was not changed in any respect, subsequent to said assessment by the Vanderburgh County Board of Review, except as set out in the State's

Exhibit "I";

5. That the Indiana State Board of Tax Commissioners through its order dated January 29, 1982, changed the Spring 1979 German Township assessment for residential improvements;

6. That first written notification that was personally given to members of plaintiff's class regarding the January 29, 1982 order was a bill for additional taxes for 1979-81 received by said plaintiffs on or before May 10, 1983.

7. That Gordon E. McIntyre, Commissioner of the State Board of Tax Commissioners issued a letter dated March 31, 1983, to Alice McBride, Vanderburgh County Auditor, explaining the application of the equalization order of the State Board of Tax Commissioners;

8. That plaintiffs' Exhibit No. 10 is a true and correct copy of the notice of appeal that the plaintiffs sent to the State Board of Tax Commissioners on May 23, 1983;

9. That plaintiffs' Exhibit No. 11 is a true and correct copy of the amended notice that plaintiffs sent to the State Board of Tax Commissioners on May 26, 1983;

10. That the 1979 September abstract (I.C. 6-1.1-14-1) was requested by the State Board of Tax Commissioners in 1981; and

11. The December abstract of assessments (I.C. 6-1.1-22-5) for 1979 property taxes was filed by August, 1980.

By agreement of the parties, the Court reserves further ruling on Motions to Correct Errors.

Counsel for defendants, Vanderburgh County Auditor, Vanderburgh County Treasurer and Vanderburgh County Common Council, orally move for a release of funds previously ordered held, and the Court now denies said motion.

HONORABLE WALTER H. PALMER,
JUDGE GIBSON CIRCUIT COURT

No. 86-1303

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

Supreme Court, U.S.
FILED
MAR 6 1987
JOSEPH F. SPANIOL, JR.
CLERK

H. J. LUBBEHUSEN, DONALD L. MILES and M. JACQUELINE MILES; MARTIN LEICH; CAROL LANT; BETTY L. DAVIS; OSCAR L. MILLER and ELIZABETH H. MILLER; DARRELL HIGGS; WALTER TIEDMAN and RUTH TIEDMAN; JOHN MUTH and ELIZABETH MUTH; PAUL WILLIAMS; JOHN MOORE and JUDY MOORE; individually and as representatives of a class of taxpayers of Vanderburgh County, Indiana,

Petitioners,

vs.

STATE OF INDIANA, et al; BOARD OF TAX COMMISSIONERS; ALICE McBRIDE, AS AUDITOR OF VANDERBURGH COUNTY; LEWIS VOLPE, AS TREASURER OF VANDERBURGH COUNTY; VANDERBURGH COUNTY COMMON COUNCIL,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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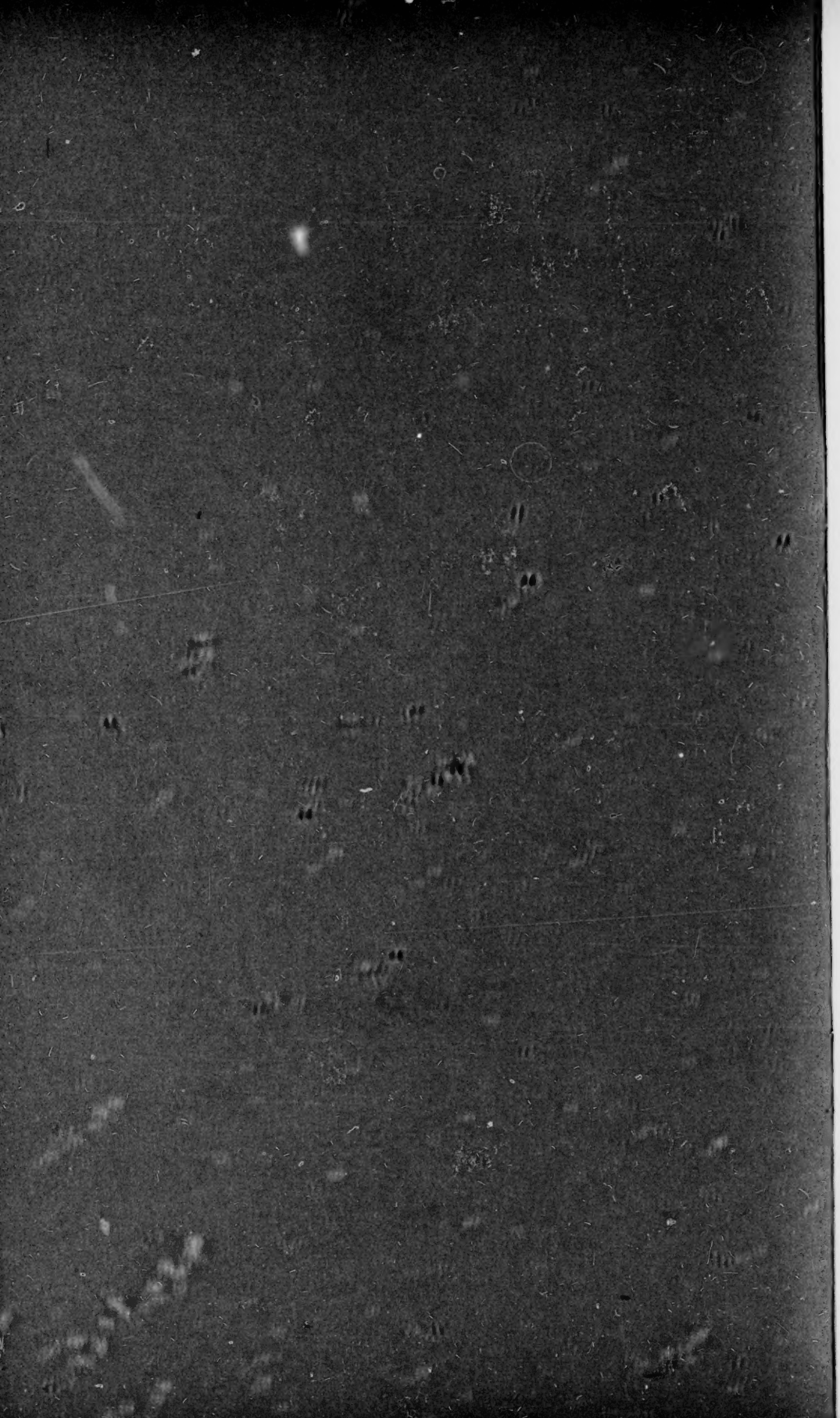

TABLE OF AUTHORITIES

Cases: *Pages:*

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Mennonite Board of Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983) 3, 4

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) 4

Statutes:

Indiana Code 6-1.1-14-1, *et seq*..... 2, 3

No. 86-1303

IN THE

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OCTOBER TERM, 1986

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents, State of Indiana, *et al.*, respectfully pray this Court to deny issuance of a writ of certiorari to review the orders and opinion of the Court of Appeals of Indiana First District, thereby refusing to review the memorandum decision

of the Court of Appeals of Indiana entered in this case on August 4, 1986; transfer denied by the Supreme Court of Indiana on December 1, 1986.

STATEMENT OF THE CASE

Respondents do not accept Petitioners' statement of the case.

This is a class action on behalf of taxpayers in Vanderburgh County, Indiana, to have a state statute, Indiana Code 6-1.1-14-1, *et seq.*, declared to be unconstitutional, and to have the State Board of Tax Commissioners' Equalization Order, which had been entered in conformity with that statutory authority, also declared to be unconstitutional and enjoin the enforcement of that Equalization Order. Petitioners have included the notice and Order in their Petition, at pages 4, 5 and 6. All notice and hearing provisions which apply to this Equalization Order were met; however, no individual, written notice was personally given to members of plaintiffs' class regarding the Equalization Order until they received their bill for additional taxes. The trial court, Court of Appeals of Indiana and the Supreme Court of Indiana have all declined to find the provisions for equalization of assessments of Indiana Code 6-1.1-14-1, *et seq.*, to be unconstitutional as Petitioners have claimed.

REASONS FOR DISALLOWANCE OF THE WRIT

The notice and hearing requirements in Indiana Code 6-1.1-14-1, *et seq.*, satisfy the due process requirements of the United States Constitution Amendment V and Amendment XIV.

In Indiana, the equalization process, Indiana Code 6-1.1-14-1, *et seq.*, is one by which the State Board of Tax Commissioners may review the propriety of the property tax assessments within and among the various taxing districts. In this particular instance all taxpayers of Vanderburgh County were notified by publication in the local newspapers as follows:

> Notice to the taxpayers of Vanderburgh County, Indiana.
>
> Notice is hereby given to the taxpayers of Vanderburgh County, Indiana that the State Board of Tax Commissioners will conduct a public hearing in the City Council Chambers, Civic Center, Evansville, Indiana, on August 26, 1981, at 10:00 A.M., CDT. The State Board of Tax Commissioners is considering the possible modification of all real property assessments within the county as of March 1, 1979, pursuant to IC 6-1.1-14-4.
>
> At such hearing, all interested parties will be given the opportunity to be heard on said matters. Said parties may appear with or without counsel. The State Board of Tax Commissioners will also accept written statements and exhibits at or before this hearing.

Every statutory notice requirement for equalization was met. The issue is whether they are sufficient. These notices would reasonably alert taxpayers that their property taxes might be modified and give the time and place for the opportunity of a hearing on the matter.

There is an apparent and justifiable difference in the required statutory notice for equalization, which is a broad review of all property assessments within a taxing district, as opposed to the review of a particular property. Notice under Indiana Code 6-1.1-14-1, *et seq.*, is primarily through local newspaper publication so as to give notice to the maximum number of persons who might be affected by the county-wide equalization of property tax assessments.

Petitioners rely upon *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983) as providing that publication alone does not afford due process. However, there the Court was dealing with a sale of a particular piece of property for back taxes and the due process rights of a mortgagee for notice of such a sale. In that case the Court held that due process required notice by mail to ensure actual notice to the mortgagee. Imposing this requirement when dealing with one property and one mortgagee is a relatively minor burden. Furthermore, the potential harm to the mortgagee's interest is quite great. On balance, the burden imposed

by the holding in *Mennonite Board v. Adams, id.*, is slight when weighed against the value of the property interest of the mortgagee which is to be determined. Likewise, the interest of a mortgagee is a legally recognized property interest to which due process rights would attach.

Petitioners provide no support for an assumption that assessed valuations assigned to property for taxation purposes are legally recognized property interests to which due process rights attach. They are not comparable. Nowhere in *Mennonite Board v. Adams, id.*, did the Court absolutely state that notice by publication was a denial of due process in other proceedings where publication notice is permitted by statute.

The primary due process standard is "reasonableness" of the means of notice chosen by the state. This requires a balance of the interest of the state versus the interest of the individual who claims protection by the Fourteenth Amendment. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

Finally, cases have long held "The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain." *Leigh v. Green* 193 U.S. 79, 89, 24 S.Ct. 390, 392, 48 L.Ed. 623 (1904) (quoting *Bell's Gap R. Co. v. Pennsylvania*, 134 U.S. 232, 239, 10 S.Ct. 533, 535, 33 L.Ed. 892 (1890)).

CONCLUSION

For the above reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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TERRY G. DUGA
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Deputy Attorney General

Attorneys for Respondents